**A Vs. B**

**A Vs. B**

**SooperKanoon Citation** : sooperkanoon.com/614681

**Court** : Punjab and Haryana

**Decided On :** Mar-08-1966

**Reported in** : AIR1967P& H152

**Judge** : H.R. Khanna, J.

**Acts** : Hindu Marriage Act, 1955 - Sections 12(1), 23(1) and 28; Code of Civil Procedure (CPC) , 1908 - Sections 107

**Appeal No.** : F.A.O. No. 157-D of 1964

**Appellant** : A

**Respondent** : B

**Advocate for Def.** : Asoke Sen,; Anand Prakash,; M.K. Chawla and;

**Advocate for Pet/Ap.** : Niren De,; Daniel Latifi,; Sardar Bahadur and;

**Disposition** : Appeal dismissed

**Judgement** :

**H.R. Khanna, J.**

1. This is an appeal by A against whom a decree of nullity annulling the marriage of the parties has been awarded by learned Additional District Judge, on a petition under Section 12 of the Hindu Marriage Act filed by his wife B. (After stating facts

and discussing evidence the judgment proceeded):

2-18. I would, therefore, affirm the finding of the Court below on issue No. 2, and hold that the present case is covered by Clause (a) of Sub-section (1) of Section 12 of the Hindu Marriage Act, according to which any marriage solemnized, whether before or after commencement of the Act, shall be voidable and may be annulled by a decree of nullity on the ground that the .respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding.

19. Mr. De has next argued that the wife by her conduct has approbated the marriage between the parties inasmuch as she received pecuniary benefits as the wife of A from him and as such she is not entitled to a decree of nullity of the marriage. Reference in this connection has been made to the statement of the wife that after 1955 she was thinking in a general way of leaving her husband. Giving the details of the benefits derived by the wife it is pointed out that A gave 8,770.15.4d. in August 1955 to the wife. In 1956 shares of the face value of Rs. 1,48,000 of certain Corporation were purchased in the name of the wife. She was thereafter made Director of that Company. On 28th March 1955 A made a gift of securities of the face value of about Rs. 9,00,000 m favour of the wife. The wife was also stated to have withdrawn a sum of Rs. 2,00,000 on 8th January 1958 from the accounts of A. The authority for the operation of that account had earlier been given by A. The present case, it is contended, is covered by the dictum of Lord Set borne, L. C., in the case of G. v. M, (1885) 10 AC 171.

While dealing with the doctrine of sincerity and the notion that a plaintiff bringing a suit for nullity of marriage must be actuated purely by the purpose of obtaining the relief on account of the grievance of the want of potency in the opposing spouse and to have no mixture of subsidiary motive, Lord Selborne observed:

'There may be conduct on the part of the person seeking this remedy which ought to estop that person from having it as for instance, any act from which the inference ought to be drawn that the party, has, with a knowledge of the facts and law, approbated the marriage. . . or has taken advantages and derived benefits from the matrimonial relation which it would be unfair and inequitable to permit him

or her, after having received them, to treat as if no such relation had ever existed. . . In cases of this kind many sorts of conduct might exist, taking pecuniary benefits for example, living for a long time together in the same house or family with the status and character of husband and wife, after knowledge of everything which is material to know.'

According to the wife, some time near about the year 1955 A told her that wealth tax and estate duty tax were coming or had already come into force and that property had to be divided and should be divided for relief in the tax. The wife then told A that she did not know as to what she was to do with the money. A then told the wife that she need not worry about the matter and he would keep on advising her. A was the first Chairman of the Corporation, and the aforesaid Company had been started by him. A felt that, being a member of Parliament, he could not execute contracts of the Government through the Corporation and be its Chairman. It was in these circumstances, according to the wife, that the various gifts were made in her favour. As regards the withdrawal of Rs. 2,00,000 from the account of A with the Bank of Jaipur, the wife has deposed that the same represented the Tilak money which had been given by her father at the time of the marriage. It was added that A was worth about a crore of rupees

20. In this connection I may observe that though the wife has stated that she was thinking in a general way of leaving her husband after 1955, her deposition also makes it clear that the actual decision to leave A was taken by her only four or five days before she actually left him.

21. According to A the gilts by him in favour of the wife were not made just to evade payment of taxes. It is stated that there were two reasons for making the gifts. One was that as he was going abroad upon assignment, he felt, if anything untoward happened to him, the wife should be possessed of property without having to pay the death duties. The second reason was to create an interest in the wife in her financial affairs. There was also some talk of the transfer of certain houses by A in favour of the wife and a note was put up on that account by C (R. W. 1) who was Senior Officer of the Estate, but this transfer ultimately did not take place.

22. The Court below on consideration of the matter came to the conclusion that the wife was not taking advantage of her own wrong or disability and as such there was no ground for rejecting her petition. According to observations on pages 253 of Rayden's treatise on Divorce, Eighth Edition, the bar on the ground of approbation to a decree for nullity of marriage is discretionary. The Court below in the present case, on judicious consideration of the matter, refused to non-suit the wife on the alleged ground of approbation and I see no sufficient ground to interfere with the view of the Court below in this respect. It is significant to observe that there is no evidence to show that the gifts in favour of the wife were made at her asking or solicitations. On the contrary the facts of the case go to show that the gifts were made keeping in view the provisions relating to wealth-tax and the payment of estate duty. So far as the withdrawal of Rs. 2,00,000 which, according to the wife, represented the Tilak money, is concerned, it is noteworthy that though a much larger amount of money was admittedly lying in the account of A, the wife withdrew only the sum of Rs. 2, 00, 000. Having arrived at the conclusion that the finding of the trial Court that A was impotent at the time of the marriage and has continued to be so till the institution of the petition I do not think it would be proper in a case like the present to set aside the decree for nullity of marriage on the score of gifts made by A in favour of the wife.

23. Lastly it has been argued that the petition of the wife was liable to be dismissed on the ground of delay in the institution of the present proceedings. Reference in this connection is made to Clause (d) of Sub-section (1) of Section 23 of the Hindu Marriage Act, according to which the Court shall grant the relief in proceedings under the Act only if there has been no unnecessary or improper delay in instituting the proceeding. My attention in this context has also been drawn to the observations on page 231 of Halsbury's Laws of England, Volume 12, Third Edition, according to which 'delay, how ever, long, in bringing a suit for nullity is not, apart from the statutory provision to the contrary in itself a bar. though it throws a special burden of proof upon the petitioner' It is submitted that whatever may be the position of law in England, in India the delay constitutes a bar. All the same it is contended that the latter observation that the delay throws a special proof of burden upon the petitioner holds good in India.

So far as the last argument is concerned. I may state that even if it may be assumed that there was a special burden of proof upon me wife to prove the impotence of A she has fully discharged that onus by clear and cogent evidence. As regards the law of delay in India, it has to be borne in mind that the delay would stand in the way of granting relief to a petitioner under the Hindu Marriage Act only if it is unnecessary or improper and not otherwise. The wife in the present case has deposed that she did not bring the proceedings earlier because of consideration of her parents and other family members. She had a number of discussions with her parents and other family members about bringing the case. As a result of the discussion she gathered that if she brought the case it would be very difficult to find matches for the daughters of her brother and sisters, and they would be ostracized from society. It is further in the evidence of the wife as also that of D that the father of the wife belongs to an orthodox family and would not even dream of a divorce. The evidence of the wife also shows that when she approached her father for giving evidence in this case he told her that he did not want to have anything to do with the present case. It were these circumstances, according to the wife, which caused the delay in the institution of the present proceedings.

Nothing cogent has been shown to me as to why the statement of the wife in this respect be not accepted. When dealing with the question of delay one should not be oblivious of the background and traditions of Hindu society and the instinctive reluctance amongst the women to come to Court and seek redress of their grievances against the husband. As has been observed on page 1037 of Hindu Law by Raghavachariar, Fifth Edition:

'The grounds for judicial separation, divorce, or nullity of marriages cannot be expected to be immediately availed of by the people of the country. It is only when the matrimonial lot becomes intolerable that either party, may be expected to resort to the Court unlike what obtains in western countries. All the same, the section provides that any unnecessary or improper delay will have the result in the dismissal of the suit. The words unnecessary and improper have therefore, in view of what has been already said regarding the culture of the orient and the general apathy that is inherent in that culture in the matter of resorting to Court for the

remedy of the matrimonial grievances however acute and serious they may be have to be liberally construed and the delay ought not to be taken serious notice of by the Court.'

In the case of Blunt v. Blunt, 1943-2 All ER 76, Viscount Simon, L. C., while specifying the considerations which should prevail with the Courts in these matrimonial matters observed--

'To these four considerations I would add a fifth of a more general character, which must indeed be regarded as of primary importance, viz., the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down. It is noteworthy that in recent years this last consideration has operated to induce the Court to exercise a favourable discretion in many instances where in an earlier time a decree would certainly have been refused.'

The above observations were relied upon by a Division Bench of Rajasthan High Court (Dave and Chhangani, JJ) in Smt. Leela v. Dr. Rao Anand Singh, AIR 1963 Raj 178. The head-note in that case, which is based upon observations in the body of the judgment, reads as under:

'The more modern trend is to exercise a liberal discretion in cases where formerly a decree would have been refused on the ground of unnecessary delay and this change is explicable on account of the changing patterns of the social behaviour and this should not be overlooked by referring to English cases in determining the cases in this country. The Indian Law of Divorce has been borrowed from the English law and, therefore, the principles enunciated in English cases do serve as valuable guiding principles. But in applying them a caution has to be exercised and two important considerations should not be ignored. Firstly the differences in the conditions of the Indian society and the English society. The second and very important consideration relates to some fundamental differences in the English law and Indian law.'

It was further observed, while dealing with the language of Section 23 of the Hindu Marriage Act:

'The creation of an absolute bar does no doubt indicate that the legislature did not deem it proper to make divorce easy but at the same time it cannot be presumed that the legislature contemplated to force the parties to remain tied even though there are grounds for divorce and the parties cannot be expected to pull together. This necessarily implies that the Courts in India have greater responsibility in determining what should be treated as unnecessary or improper delay and should naturally be strict in this behalf on account of the creation of absolute bar. These differences and the peculiar nature of the cases under Section 13(2)(i) must be given due weight and recognition and they prominently and pointedly indicate a caution against refusing relief on the ground of delay. The test is whether the delay is culpable or to put it in slightly stronger words, whether it is in the nature of wrong. In view of the peculiar nature of the cases under Section 13(2)(i) the liberal trend of the English law in an extended form should be applied to cases of this type.'

The dicta laid down in the above cases apply to the present case. There has been no culpable delay and it is obvious that the parties have reached a stage where there is no possibility of reconciliation between them. In the circumstances, it would be hardly proper in the words of Viscount Simon, L. C., 'to insist on the maintenance of Union which has utterly broken down.'

24. After giving the matter my consideration I am of the view that there has not been an unnecessary and improper delay as to justify the dismissal of the petition and that the order the Court below in this respect is not liable to be interfered with.

25. The appeal, consequently, fails and is dismissed with costs.